

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

OHIO MIDLAND, INC., <i>et al.</i>	:	
	:	
Plaintiffs,	:	Case No. C2-05-1097
	:	
v.	:	JUDGE ALGENON L. MARBLEY
	:	
GORDON PROCTOR, Director of Ohio Department of Transportation, <i>et al.</i>,	:	Magistrate Judge Abel
	:	
Defendants.	:	

ORDER

This matter comes before the Court on two motions filed by Defendant City of Benwood (“Benwood”): (1) Motion for Bond to Cover the Cost of Demolition of the Bridge and/or in the Alternative Motion for a Constructive Trust to be Placed Upon Assets of the Plaintiffs; and (2) Motion for Summary Judgment.

In Benwood’s Motion for Bond and/or Constrictive Trust, Benwood asks the Court to:

(a) Order Plaintiffs to post a \$2,924,073.72 bond with the Court, or (b) place a constructive trust upon Plaintiffs’ assets in the same amount, in order to protect Benwood in the event it faces removal liability with respect to the Bellaire Bridge, the subject of the ongoing litigation. In Benwood’s Motion for Summary Judgment, Benwood “restates, realleges, and incorporates” the facts and assertions alleged in its previously filed Motion to Dismiss and Motion for Bond and/or Constrictive Trust.

Because this Court dismissed Benwood as a defendant in this matter, along with its previously filed Motion to Dismiss, (See Order, Doc. No. 75), Benwood’s Motion for Bond and/or Constrictive Trust is **MOOT**, as Benwood no longer faces potential liability from

Plaintiffs' suit. Additionally, Benwood's Motion for Summary Judgment, to the extent it requests summary judgment on Plaintiffs' claims is **MOOT**, as Benwood is no longer a Defendant in this matter. To the extent such Motion requests summary judgment on any purported counterclaims asserted by Benwood, it is **DENIED**, as Benwood never filed a pleading stating any counterclaim, as required by F.R.C.P. 13(a). Accordingly, Plaintiffs' Cross-Motion for Summary Judgment on any purported counterclaims asserted by Benwood is MOOT.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Court Judge

DATED: March 30, 2007